

NOTE TO PARAGRAPH (i)(1): Nothing in this section requires the reporting of the holdings of a revocable inter vivos trust (also known as a “living trust”) with respect to which the filer, his spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer’s spouse, nor the filer’s dependent child. Furthermore, nothing in this section requires the reporting of the holdings of a revocable inter vivos trust from which the filer, his spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer’s spouse, nor the filer’s dependent child.

(2) *Qualified trusts and excepted trusts.*

(i) A filer should not report information about the holdings of any qualified blind trust (as defined in § 2634.403) or any qualified diversified trust (as defined in § 2634.404).

(ii) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but does not otherwise need to report information about the trust’s holdings. For purposes of this part, the term “excepted trust” means a trust:

(A) Which was not created directly by the filer, spouse, or dependent child; and

(B) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(3) *Excepted investment funds.* (i) No information is required under paragraph (i)(1) of this section about the underlying holdings of an excepted investment fund as defined in paragraph (i)(3)(ii) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income.

(ii) For purposes of financial disclosure reports filed under the provisions of this subpart, an “excepted investment fund” means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(A)(1) The fund is publicly traded or available; or

(2) The assets of the fund are widely diversified; and

(B) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(iii) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

(j) *Special rules.* (1) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this subpart. However, if the individual has authority to exercise control over the fund’s assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(2) In lieu of entering data on a part of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the concerned part of the report form.

(k) For reports of confidential filers described in § 2634.904(a)(3) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual’s public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under §§ 2634.103 and 2634.601(b) (see § 2634.901(b) and (c) of this subpart).

[71 FR 28236, May 16, 2006, as amended at 73 FR 15388, Mar. 24, 2008]

§ 2634.908 Reporting periods.

(a) *Incumbents.* Each confidential financial disclosure report filed under § 2634.903(a) of this subpart shall include on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete

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statement of the information required to be reported according to the provisions of this subpart for the preceding calendar year, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) *New entrants.* Each confidential financial disclosure report filed under § 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

[57 FR 11826, Apr. 7, 1992, as amended at 71 FR 28239, May 16, 2006]

§ 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

Subpart J—Certificates of Divestiture

SOURCE: 69 FR 44894, July 28, 2004, unless otherwise noted.

§ 2634.1001 Overview.

(a) *Scope.* 26 U.S.C. 1043 and the rules of this subpart allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements. To defer the gains, an eligible person must obtain a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the property. This subpart describes the circumstances when an eligible person may obtain a Certificate of Divestiture and estab-

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lishes the procedure that the Office of Government Ethics uses to issue Certificates of Divestiture.

(b) *Purpose.* The purpose of section 1043 and this subpart is to minimize the burden that would result from paying capital gains tax on the sale of assets to comply with conflict of interest requirements. Minimizing this burden aids in attracting and retaining highly qualified personnel in the executive branch and ensures the confidence of the public in the integrity of Government officials and decision-making processes.

§ 2634.1002 Role of the Internal Revenue Service.

The Internal Revenue Service (IRS) has jurisdiction over the tax aspects of a divestiture made pursuant to a Certificate of Divestiture. Eligible persons seeking to defer capital gains:

(a) Must follow IRS requirements for reporting dispositions of property and electing under section 1043 not to recognize capital gains; and

(b) Should consult a personal tax advisor or the IRS for guidance on these matters.

§ 2634.1003 Definitions.

For purposes of this subpart:

Eligible person means:

(1) Any officer or employee of the executive branch of the Federal Government, except a person who is a special Government employee as defined in 18 U.S.C. 202;

(2) The spouse or any minor or dependent child of the individual referred to in paragraph (1) of this definition; and

(3) Any trustee holding property in a trust in which an individual referred to in paragraph (1) or (2) of this definition has a beneficial interest in principal or income.

Permitted property means:

(1) An obligation of the United States; or

(2) A diversified investment fund. A diversified investment fund is a diversified mutual fund or diversified unit investment trust, as defined in 5 CFR 2640.102(a), (k) and (u);